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Attorneys for Defendants Aggressive Partnerships, Inc. and John Barsoli

SAN PELLEGRINO, S.p.A. and NESTLE  
WATERS, N.A.,

Plaintiffs,

v.

AGGRESSIVE PARTNERSHIPS, INC.  
and JOHN BARSOLI,

Defendants.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW  
YORK

Docket No.: 08-cv-5462 (JGK)

ANSWER; AFFIRMATIVE  
DEFENSES; JURY DEMAND

Defendants Aggressive Partnerships, Inc. ("Aggressive") and John Barsoli  
("Barsoli") through their undersigned counsel answer the complaint as follows:

**NATURE OF ACTION**

1. The allegations contained in Paragraph 1 of the Complaint assert a legal conclusion to which no factual answer is required, except Defendants admit that Plaintiff purports to bring this action based on the sections cited. To the extent that a response is required, Defendants deny the allegations.

**JURISDICTION AND VENUE**

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint.

**PARTIES**

4. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and leave Plaintiff to its proofs.

5. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and leave Plaintiff to its proofs.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

8. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

**FACTS COMMON TO ALL COUNTS**

9. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint.

10. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.

11. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint.

12. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.

13. Defendants deny the on information and belief the allegations contained in Paragraph 13 of the Complaint.

14. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit the allegations contained in Paragraph 16 of the Complaint.

17. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

18. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint.

19. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Defendants are without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint, except that defendants deny the disclaimer utilized by Aggressive was inadequate. Defendants further aver that each such carton contained the following disclaimer:

THE ORIGINAL SAN PELLEGRINO/ NESTLES WATER CORP  
PRODUCTS CONTAINED IN THIS CARTON HAVE BEEN  
REPACKAGED NOT UNDER LICENSE FROM SAN  
PELLEGRINO/NESTLES WATER COPR BY AGGRESSIVE  
PARTNERSHIPS WHICH ASSUMES FULL RESPONSIBILITY FOR  
THE PRODUCTS

SAN PELLEGRINO/NESTLES WATER CORP IS A REGISTERED TRADEMARK  
OF SAN PELLEGRINO/NESTLES WATER CORP. SAN PELLEGRINO/NESTLES  
WATER CORP IS THE OWNER OF THE COPYRIGHT TO THE OVERALL  
APPEARANCE AND PLACEMENT OF THE WRITTEN MATERIAL UPON THE  
SHIPPER BEARING THE SAN PELLEGRINO/NESTLES WATER CORP  
TRADEMARKS.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint, except admit that certain of plaintiff's products were resold at wholesale in their original packaging and that these products were packed inside

ordinary cardboard boxes containing a description of these contents without plaintiff's advance knowledge. 2

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint, except admit that Aggressive purchased San Pellegrino water at retail and repackaged the product for sale at wholesale.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint, except admit that Aggressive purchased San Pellegrino water and repackaged the product for sale at wholesale.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

### **COUNT I**

26. Defendants repeat and reallege their prior responses as if fully set forth herein.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

### **COUNT II**

32. Defendants repeat and reallege their prior responses as if fully set forth herein.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

### **COUNT III**

36. Defendants repeat and reallege their prior responses as if fully set forth herein.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

#### **COUNT IV**

40. Defendants repeat and reallege their prior responses as if fully set forth herein.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

#### **COUNT V**

44. Defendants repeat and reallege their prior responses as if fully set forth herein.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

**COUNT VI**

46. Defendants repeat and reallege their prior responses as if fully set forth herein.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

**COUNT VII**

48. Defendants repeat and reallege their prior responses as if fully set forth herein.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

**COUNT VIII**

52. Defendants repeat and reallege their prior responses as if fully set forth herein.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.



54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

**WHEREFORE**, defendants demand judgment dismissing plaintiff's complaint, for costs, attorney's fees

**AFFIRMATIVE DEFENSES**

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff has, by its own conduct, waived any and all claims against Defendants.
3. Plaintiff's claims are barred by the first sale doctrine.
4. Plaintiff's claims are void as against public policy.
5. Plaintiff's losses, if any, were not proximately caused by Defendants.
6. Plaintiff's claims are barred by the doctrines of laches, estoppel, waiver, unclean hands and release.
7. To the extent any damages accrue against Defendants, they are the result of the actions of third parties over whom Defendants have no control and from whom they are entitled to contribution and indemnification.
8. Plaintiff has no claim for compensatory, consequential, treble or punitive damages under the circumstances of this case.
9. Plaintiff has no claim for attorneys' fees under the circumstances of this case or for damages for lost and anticipated profits and revenues.

10. Defendants did not violate any legal duties owed to Plaintiff and did not violate the terms or conditions of any contracts and/or agreements with Plaintiff, or any statutes or common law duties.

11. Defendants reserve the right to move to dismiss the complaint for failure to properly plead allegations contained in the Complaint.

12. To the extent any damages accrue against Defendants, Plaintiff failed to mitigate such alleged damages.

13. Any alleged damage(s) caused to Plaintiff resulted from its own conduct.

14. Plaintiff has failed to join indispensable parties.

15. Defendants reserve the right to assert further affirmative defenses as discovery may reveal.

**JURY DEMAND**

Defendants demand trial by jury as to all issues so triable.

Dated: August 28, 2008

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By: \_\_\_\_\_

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